



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 30 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hugh D. Shine
P.O. Box 793
Temple, TX 76503

RE: MUR 6548

Dear Mr. Shine:

The Federal Election Commission reviewed the allegations in your complaint, which was received on April 5, 2012, concerning respondents Eric for Texas Campaign and David Oberg in his official capacity as treasurer (the "Committee"), Eric Klingemann and GUNS+. On September 24, 2013, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to dismiss the allegation that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act") or underlying Commission regulations. Also on this date, the Commission found that there is no reason to believe that Eric Klingemann or GUNS+ violated the Act or Commission regulations as alleged in the Complaint. Accordingly, on September 24, 2013, the Commission closed the file in this matter.

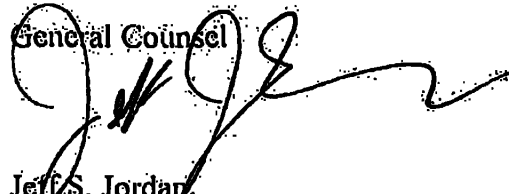
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

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The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name and title.

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosures
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENTS: Eric for Texas Campaign
6 David Oberg as treasurer
7 Eric Klingemann

MUR 6548

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9 **I. INTRODUCTION**

10 This matter was generated by a Complaint filed by Hugh D. Shine alleging violations of
11 the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondents Eric for
12 Texas Campaign and David Oberg in his official capacity as treasurer (the "Committee") and
13 Eric Klingemann. After reviewing the record, the Commission dismissed the matter as to the
14 Committee, and its treasurer in his official capacity, pursuant to its prosecutorial discretion.
15 The Commission also found no reason to believe that Klingemann violated the Act or
16 underlying Commission regulations, as alleged in the Complaint.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Factual Background**

19 The Complaint asserts that a Klingemann supporter circulated e-mails that included two
20 flyers advertising a 25-gun raffle, the proceeds of which were intended to benefit the
21 Committee.¹ Compl. at 1. The first flyer explains that a maximum of 250 raffle tickets would be
22 sold, at \$100 per ticket and, beginning in "late spring 2012," one drawing per week would be
23 held, with a weekly prize of one gun, for 25 weeks. *Id.*; *see also* Compl., Ex. 1. The flyer
24 further states that raffle prizes were to be picked up at GUNS+ of Georgetown, Texas, which is
25 listed as a sponsor, along with "Eric Klingemann for Congress." *Id.* The second flyer lists the 25

¹ The Complaint includes the flyers, but not the e-mail.

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1 types of guns to be raffled off and includes the business logos for 21 different gun
2 manufacturers. Compl. at 1; *see also* Compl., Ex. 2.

3 Observing that the Act and Commission regulations prohibit corporations from making
4 contributions in connection with a Federal election, the Complaint maintains that the Committee
5 may have received illegal corporate contributions. Compl. at 1-3. First, assuming that GUNS+
6 is a corporation, the Complaint states that it is “unclear” how GUNS+ may have “sponsored” the
7 raffle and suggests that GUNS+ might have donated the firearms to the Committee at no cost.
8 *Id.* Such a donation, the Complaint asserts, would constitute an illegal in-kind corporate
9 contribution in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(a), (d). Compl. at 1-2.²
10 *Id.*

11 Second, the Complaint notes that corporations are generally prohibited from using
12 corporate resources to facilitate the making of contributions to Federal political committees,
13 including fundraising activities. *Id.* Accordingly, given that a corporation’s logo could
14 potentially constitute a corporate resource, the Committee’s alleged inclusion of logos on the
15 second flyer, as part of its fundraising, might constitute corporate facilitation, in violation of
16 11 C.F.R. § 114.2(f). *Id.*

17 Finally, the Complaint maintains that, although the e-mails allegedly constituted “general
18 public political advertising,” they failed to include (1) a disclaimer stating that the Committee

² The Complaint appends the results of an internet search as to the value of the guns and claims that the firearms ranged in price from approximately \$176 to \$1,800, for an approximate total value of \$12,700. Compl. at 1; *see also id.*, Ex. 3.

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1 had paid for them and (2) a notice requesting contributors' names, addresses, occupations and
2 names of employers. *See* 11 C.F.R. §§ 110.11(a) and (b)(1); *see also* 11 C.F.R. § 104.7(b).³

3 In his Response, candidate Klingemann asserts that the e-mails were distributed by a
4 "private individual to a discrete list of recipients," and not by the Committee. Klingemann Resp.
5 at 2-4. According to Klingemann, the Act and Commission regulations generally do not address
6 internet communications. Specifically, Klingemann cites the Commission's *Campaign Guide for*
7 *Congressional Candidates and Committees* at 139, n. 1, for the proposition that "the term general
8 public political advertising," as found in 11 C.F.R. § 100.26, does not include any internet
9 communication except for a communication placed for a fee on another person's website.
10 Klingemann Resp. at 2. Nonetheless, in an effort to avoid "any semblance of impropriety,"
11 Klingemann represents that the Committee will ask the private individual to remove the logos
12 and include a disclaimer and a notice to contributors, as described above, in any subsequent
13 e-mails. *Id.* at 3.⁴

14 Klingemann adds that his Committee had arranged to purchase firearms from GUNS+ at
15 a "fair market price" to be used as raffle prizes. *Id.* According to Klingemann, the raffle had not
16 occurred as of the date on which he filed his Response. *Id.* However, if and when the raffle
17 occurs, Klingemann represents that the Committee will disclose the appropriate disbursements to
18 GUNS+ in its financial disclosure reports. *Id.* In fact, after the Complaint and Responses in this
19 matter were filed, the Committee filed a report entitled "Termination Report," covering the time

³ The Complaint also alleges that the e-mails failed to include information that may have been required by section 6113 of the Internal Revenue Code. Under 26 U.S.C. § 6113, certain tax-exempt organizations that are not eligible to receive tax deductible charitable contributions, and whose gross receipts normally exceed \$100,000, must disclose that contributions are not deductible for Federal income tax purposes as charitable contributions. Because the Commission has no jurisdiction over section 6113, the Commission did not address this allegation.

⁴ Attached to Klingemann's Response are samples of the e-mails, as revised. *Id.*

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1 period from May 10, 2012, through June 7, 2012, which discloses an undated disbursement of
2 \$5,645.24 to GUNS+. The disbursement's purpose is labeled as "product for gun raffle."

3 In a Response filed by the Committee's treasurer, he denies any corporate sponsorship of
4 the raffle or any other illegal corporate support for the Klingemann campaign. Oberg Resp. at 1-
5 4. Oberg also asserts that the raffle was never "advertised in any media, nor has it been a 'public
6 communication' by the campaign" and states that the e-mails had been distributed to "friends and
7 family." *Id.* at 2. The Klingemann supporter who sent the e-mail, William Kelberlau, also
8 submitted a letter denying the Complaint's allegations. Kelberlau Letter at 1.⁵ Kelberlau further
9 states that the Complaint intentionally withheld attachments to the e-mails that requested raffle
10 ticket purchasers' names, addresses, telephone numbers, and e-mail addresses. *Id.*

11 **B. Legal Analysis**

12 Disclaimers are not required on e-mails by "persons other than political committees."
13 *Internet Communications*, 71 Fed. Reg. 18,589, 18,600-01 (April 12, 2006) (explanation and
14 justification). And political committees are only required to include disclaimers on
15 "substantially similar" e-mail communications exceeding 500 in number. *See* 11 C.F.R.
16 § 110.11(a).

17 Based on the Complaint and Responses, there is little indication that Kelberlau's
18 relationship with the Committee was anything more than that of a "campaign supporter" or
19 "private citizen." Kelberlau Resp. at 1; Klingemann Resp. at 2. Nor does the record indicate
20 how many e-mails Kelberlau sent. The Commission does not believe it would be an efficient use

⁵ Kelberlau does not appear to have received a salary or other disbursements from the Committee, as no disbursements to him exceeding \$200 have been itemized on Schedule B of the Committee's disclosure reports. In his Response, he described himself as a "campaign supporter" but signed the response as "Raffle and Signs Coordinator." Kelberlau Letter at 1-2.

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1 of its resources to investigate the allegations set forth in the Complaint as to the e-mails from
2 Kelberlau, including whether they were "electronic mail of more than 500 substantially similar
3 communications . . . sent by a political committee" and, therefore, required a disclaimer.
4 11 C.F.R. § 110.11(a)(1). Therefore, in furtherance of the Commission's priorities and relative
5 to other matters pending on the Enforcement docket, the Commission exercises its prosecutorial
6 discretion and dismisses this matter as to Eric for Texas Campaign and David Oberg, in his
7 official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

8 With respect to Mr. Klingemann, the record in this matter does not indicate violations by
9 him as an individual. Therefore, the Commission finds no reason to believe that Eric
10 Klingemann violated the Act or underlying Commission regulations, as alleged in the Complaint.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4
5 RESPONDENT: GUNS+

MUR 6548

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7 **I. INTRODUCTION**

8 This matter was generated by a Complaint filed by Hugh D. Shine alleging violations of
9 the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondent GUNS+.
10 After reviewing the record, the Commission found no reason to believe that GUNS+ violated
11 the Act or underlying Commission regulations, as alleged in the Complaint.

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Background**

14 The Complaint asserts that a Klingemann supporter circulated e-mails that included two
15 flyers advertising a 25-gun raffle, the proceeds of which were intended to benefit the
16 Committee.¹ Compl. at 1. The first flyer explains that a maximum of 250 raffle tickets would be
17 sold, at \$100 per ticket and, beginning in "late spring 2012," one drawing per week would be
18 held, with a weekly prize of one gun, for 25 weeks. *Id.*; *see also* Compl., Ex. 1. The flyer
19 further states that raffle prizes were to be picked up at GUNS+ of Georgetown, Texas, which is
20 listed as a sponsor, along with "Eric Klingemann for Congress." *Id.*

21 Observing that the Act and Commission regulations prohibit corporations from making
22 contributions in connection with a Federal election, the Complaint maintains that the Committee
23 may have received illegal corporate contributions from GUNS+. Compl. at 1-3. Assuming that
24 GUNS+ is a corporation, the Complaint states that it is "unclear" how GUNS+ may have
25 "sponsored" the raffle and suggests that GUNS+ might have donated the firearms to the

¹ The Complaint includes the flyers, but not the e-mail.

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1 Committee at no cost. *Id.* Such a donation, the Complaint asserts, would constitute an illegal in-
2 kind corporate contribution in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(a), (d).
3 Compl. at 1-2.² *Id.*

4 A Response on behalf of GUNS+, including a sworn affidavit, was filed by Kristi Simank
5 (“Simank”). Simank avers that she is the president and chief executive officer of Applied
6 Response Solutions, LLC (“ARS”), the entity that owns GUNS+. *Id.*³ According to Simank,
7 neither GUNS+ nor ARS agreed to co-sponsor the gun raffle or authorized the use of the
8 “GUNS+” name in connection with the Klingemann campaign. *Id.*

9 In addition, Simank attests that GUNS+ did not donate firearms or anything else of value
10 to the Committee, but rather offered to sell the guns to the Committee at retail price in
11 connection with the raffle. *Id.* Finally, as of April 25, 2012, the date of her Response, Simank
12 states that “no purchase was ever made” by the Klingemann campaign “and no sale was actually
13 consummated.”

14 After the Complaint and Simank’s Response in this matter were filed, Eric for Texas
15 Campaign and David Oberg in his official capacity as treasurer (the “Committee”) filed a
16 financial disclosure report with the Commission entitled “Termination Report.” The Report
17 covers the time period from May 10, 2012, through June 7, 2012, and discloses an undated
18 disbursement of \$5,645.24 to GUNS+. The disbursement’s purpose is labeled as “product for
19 gun raffle.”

20

² The Complaint appends the results of an internet search as to the value of the guns and claims that the
firearms ranged in price from approximately \$176 to \$1,800, for an approximate total value of \$12,700. Compl. at
1; *see also id.*, Ex. 3.

³ Simank’s Response and attached Certificate of Filing with the State of Texas (Ex. B) indicate that GUNS+
and ARS are limited liability companies, not corporations. Because it appears that GUNS+ did not make a
contribution to the Committee, *see infra*, the Commission did not explore this distinction further.

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B. Legal Analysis

The allegation that GUNS+ may have made an in-kind contribution of firearms to the Committee is refuted by the affidavit from Simank and other information obtained by the Commission. These explain that GUNS+ had arranged to sell the firearms to the Committee at fair market value. Therefore, the Commission finds no reason to believe that GUNS+ violated the Act or underlying Commission regulations, as alleged in the Complaint.

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